

1 receiving a copy of the Complaint, the Chesterland News published a “Clarification” on November 2,
2 2016, providing the name and address of the individual responsible for the ads.² The clarification
3 provided the following information: “Paid for by Frank Durkalski, 8124 Mulberry Road, Chester
4 Township, and not authorized by any candidate or candidate committee.”³

5 The Chesterland News responds—correctly—that a media entity has no duty to ensure a paid
6 political ad complies with the Act’s disclaimer requirements; instead, the obligation rests with the
7 person placing the ad.⁴ Durkalski responds that he saw the ad in another newspaper and decided to
8 run it in the Chesterland News.⁵ He further states that the ad did not contain an endorsement, and
9 that he was expressing his First Amendment rights. *Id.* Durkalski also states that he was responsible
10 for the November 2, 2016, clarification. *Id.*

11 Whenever any person makes a disbursement for the purpose of financing communications
12 expressly advocating the election or defeat of a clearly identified candidate, through a newspaper or
13 general public political advertising, the Act and Commission regulations require that the
14 communication clearly state the name and street address of the person who paid for communication,
15 and, if the communication is not authorized by a candidate or candidate’s committee, state that it is
16 not authorized as such. 52 U.S.C. § 30120(a)(3); 11 C.F.R. §§ 110.11(a)(2), (b)(3).

² The Complaint attached black and white copies of the ads and a copy of the clarification.

³ Publicly available information for 2016 advertising rates for the Chesterland News indicates that quarter-page advertisements cost \$152 for black and white ads and \$202 for color ads. See http://www.chesterlandnews.com/wp-content/uploads/2016/05/Rate-Card-CN-2016_final_web.pdf. Therefore, the total cost would have been, at most, \$404 for two color quarter-page ads, and \$304 for two black and white quarter-page ads.

⁴ Chesterland News Resp. at 1. See generally, 11 C.F.R. § 110.11(b), (c).

⁵ Durkalski Resp. at 1.

1 Thus, in furtherance of the Commission's priorities relative to other matters pending on the
2 Enforcement docket and the small amount at issue,⁶ and Durkalski's pre-election clarification that
3 identified him as the party responsible for the ads, the Office of General Counsel recommends that
4 the Commission exercise its prosecutorial discretion and dismiss the allegations against him
5 pursuant to *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the
6 Commission find no reason to believe as to the Chesterland News. Finally, we recommend that the
7 Commission approve the attached Factual and Legal Analyses, close the file as to all respondents,
8 and send the appropriate letters.

9 **RECOMMENDATIONS**

- 10 1. Dismiss the allegations that Frank Durkalski violated the Act and Commission
11 regulations, pursuant to the Commission's prosecutorial discretion under *Heckler*
12 *v. Chaney*, 470 U.S. 821 (1985);
13
14 2. Find no reason to believe that the Chesterland News violated the Act and Commission
15 regulations;
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17 3. Approve the attached Factual and Legal Analyses and the appropriate letters; and
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19 4. Close the file as to all Respondents.

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22 Lisa J. Stevenson
23 General Counsel

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26 Kathleen M. Guith
27 Associate General Counsel

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30 9.20.17
31 Date

32 BY: 
33 Stephen Gura
Deputy Associate General Counsel

⁶ Although the available information does not indicate exactly what the ads' costs were, they were likely just over \$250, the threshold for independent expenditure reporting. See 52 U.S.C. §§ 30101(17), 30104(c); 11 C.F.R. §§ 100.16(a), 104.4(e)(3), 105.4, 109.10(b).

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENT: Frank Durkalski

MUR 7210

I. INTRODUCTION

This matter was generated by a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended (“the Act”) and Commission regulations by Frank Durkalski and the Chesterland News. It was scored as a low-rated matter under the Enforcement Priority System, by which the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

The Complaint alleges that on August 10th and October 19, 2016, the Chesterland News ran two paid advertisements criticizing Hillary Clinton that lacked appropriate disclaimers. After receiving a copy of the Complaint, the Chesterland News published a “Clarification” on November 2, 2016, providing the name and address of the individual responsible for the ads.¹ The clarification provided the following information: “Paid for by Frank Durkalski, 8124 Mulberry Road, Chester Township, and not authorized by any candidate or candidate committee.”²

The Chesterland News responds—correctly—that a media entity has no duty to ensure a paid political ad complies with the Act’s disclaimer requirements; instead, the obligation rests

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3 endorsement, and that he was expressing his First Amendment rights. Durkalski also states that
4 he was responsible for the November 2, 2016, clarification.

5 **B. Legal Analysis**

6 Whenever any person makes a disbursement for the purpose of financing
7 communications expressly advocating the election or defeat of a clearly identified candidate,
8 through a newspaper or general public political advertising, the Act and Commission regulations
9 require that the communication clearly state the name and street address of the person who paid
10 for communication, and, if the communication is not authorized by a candidate or candidate's
11 committee, state that it is not authorized as such. 52 U.S.C. § 30120(a)(3); 11 C.F.R.
12 §§ 110.11(a)(2), (b)(3).

13 Accordingly, in furtherance of the Commission's priorities relative to other matters
14 pending on the Enforcement docket and the small amount at issue,⁵ and Durkalski's pre-election
15 clarification that identified him as the party responsible for the ads, the Commission exercises its
16 prosecutorial discretion and dismisses the allegations as to Frank Durkalski pursuant to *Heckler v.*
17 *Chaney*, 470 U.S. 821, 831-32 (1985).

³ Chesterland Resp. at 1. *See generally*, 11 C.F.R. § 110.11(b), (c).

⁴ Durkalski Resp. at 1.

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RESPONDENT: Chesterland News

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10 for communication, and, if the communication is not authorized by a candidate or candidate's
11 committee, state that it is not authorized as such. 52 U.S.C. § 30120(a)(3); 11 C.F.R.
12 §§ 110.11(a)(2), (b)(3).

13 Accordingly, because Durkalski, not the Chesterland News, paid for the ads and was
14 responsible for the disclaimer on the ads, the Commission finds no reason to believe that the
15 Chesterland News violated the Act or Commission regulations.

³ Chesterland Resp. at 1. *See generally*, 11 C.F.R. § 110.11(b), (c).

⁴ Durkalski Resp. at 1.

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RESPONDENTS: Frank Durkalski,
Chesterland News

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